IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 6098 of 2004

Between:

K. Balakrishna Goud, S/o. Ramulu Goud, Hindu, Resident of Chandrikal (V),

Peddakothapally (M), Mahabubnagar District.

... PETITIONER

AND

The Prohibition & Excise Superintendent, Mahabubnagar District,

Mahabubnagar.

...RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to declare the action of the respondent is illegal in not sending the toddy sample obtained from the shop of the petitioner to a independent laboratory when there is difference of opinion between the State Task Force and Government Chemical Examiner for Prohibition and Excise, Regional Prohibition & Excise Laboratory, Hyderabad and in consequence thereof to set aside the order of the Respondent bearing CR.No.B3/1759/2003 dated 09-03-2004 by issuing a Writ more particularly in the nature of Writ of Mandamus or any other writ, order or direction as this Hon'ble Court may deems fit and proper

Counsel for the Petitioner: MR.V.V.NARASIMHA RAO

Counsel for the Respondent: GP FOR PROHIBITION & EXCISE

The Court made the following order:

ORDER:

Petitioner is a toddy tapper having the TFT licence bearing No.4 dated 18.05.2002 of toddy shop for Counter No.4, Chandrikal Village, Peddakothapally Mandal, Mahabubnagar District. In respect of the said shop a surprise check was made on 01.11.2002 by the Prohibition & Excise officials and registered a case vide PCR No.559 of 2002-03 by drawing samples under Rule 24 of the Andhra Pradesh Excise (Arrack & Toddy Licences General Conditions) Rules, 1969 (for short 'the Rules'). The Excise officials tested the toddy samples with required chemicals in the presence of the petitioner and found that toddy is free from chloral hydrate. But the samples sent to the Government Chemical Examiner for Prohibition and Excise, Hyderabad was found to be adulterated with chloral hydrate vide report dated 19.12.2002. Accordingly, a show cause notice dated 19.12.2003 was issued to the petitioner stating to show cause as to why the petitioner's TFT licence shall not be cancelled. Petitioner submitted his explanation to the said notice on 28.01.2004.

Learned counsel appearing for the respondent submits that when the toddy was tested on the spot it was free from chloral hydrate but when the same was sent to the Chemical Examiner, he opined that the said sample is adulterated with chloral hydrate. The request of the petitioner for sending second sample bottles to an independent Laboratory was rejected as the petitioner failed to submit his application before the Prohibition & Excise Superintendent and complete the formalities within three days of drawl of samples, which is

laid down in G.O.Ms.No.973 (Rev.Ex.II) Dept, dated 21.11.2002, if sample is drawn in the presence of licencee and within seven days if the samples are drawn in the absence of the licencee at the time of inspection. Admittedly, the petitioner did not avail himself of the opportunity provided in the G.O.

Therefore, I am of the opinion that the petitioner is not entitled to seek a second opinion by the independent Laboratory as he failed to avail the opportunity provided in the above G.O. I do not see any illegality or irregularity in canceling the licence of the petitioner.

Accordingly, the writ petition is dismissed. No costs.

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V. ESWARAIAH, J

April 11, 2005

Dsk

To

1. The Prohibition & Excise Superintendent, Mahabubnagar District, Mahabubnagar.

2. Two CCs to GP For Prohibition & Excise, High Court Buildings, Hyderabad (OUT).

Two CD Copies.